IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.209 OF 2002

Shri Kisan Balu Kathe, Dombivli. ..Petitioner.

V/s.

Shri Pravin C.Anjarlekar & Anr. ..Respondents.

Mr.S.V.Palsuledesai for petitioner.

Mr.G.S.Godbole for respondent Nos.1 and 2.

Mr.A.R.Patil, AGP for respondent No.3.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 23, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant pleadings on record.

2. The case made out in the petition as filed about wilful disobedience of the order of the court can be culled out from the averments in paragraph-4 of the petition. The same reads thus:

> "The Petitioner states that since 10th December, 2001 the Respondents have collected sand, bricks and other building materials and dumped the said articles on the suit property and since 11th December, 2001 the Respondents commenced work of construction on the suit property in possession of the Petitioner. The Petitioner has already informed the Respondent No.2 not to take law into his own hands and not to disturb the Petitioner's possession and peaceful enjoyment of the suit

> property. The Petitioner further states that the Respondents failed and neglected to obey the order passed by the trial Court and the Petitioner's repeated requests to the Respondents to obey the order passed by the Hon'ble Court fell on deaf ears."

3. The respondents have filed reply and have placed on record that the Judgment and order of injunction, on the basis of which grievance is made before this court, is misplaced. My attention is invited to the Judgment and decree passed in the suit filed by the respondents/contemnors in R.C.Suit No.285 of 1992 decided on 25th November, 1998. It is also seen that both decrees were subject matter of challenge before the District Court at Kalyan in C.Appeal Nos.434 of 1996 and 2 of 99. The Appellate Court has disposed of the said appeals by passing following order:

> "1) The Civil Appeal No.2/99 is allowed, while the Civil appeal No.434 of 1996 is partly allowed.
>
> 2) Judgment and decree granted by II Jt.C.J.J.D. Kalyan in R.C.S.No.285/1992 is quashed and hereby set aside with the costs through out. While the judgment and decree granted by II Jt. J.J.D. at Kalyan in R.C.S.No.405/91 is hereby modified and M/s.Deep Corporation and Shri Pravin Chinteman Anjarlekar are hereby permanently restrained from obstructing or dispossessing Shri Kisan Balu Kathe from 2 shops galas situated over plot no.2 of village chole carved out from portion of survey no.227 and survey no.177 Hissa no.13 of village chole, otherwise than due process of law.

> 3) M/s.Deep Corporation and Shri Pravin Chinteman Anjarlekar shall pay to Kisan Balu Kathe costs in appeal no.434/96 and bear their own.
>
> 4) The record and proceeding in R.C.S.No. 282/92 and R.C.S.No. 405/91 be sent to Lower Court forthwith."

Suffice it to observe that, on the basis of this Judgment and decree passed, there is nothing to restrain the respondents/contemnors from carrying out construction work which is stated to have been commenced on 11th December, 2001. Viewed thus, it is not a case of willful disobedience or breach of order of the court.

4. To get over this position counsel for the petitioner would rely on the assertions made in the affidavit filed before this court on 31st March, 2006 that it is also the case of the petitioner that the respondents/contemnors were disturbing possession of the two suit shops, which are in possession of the petitioner in respect of which decree is already passed in favour of the petitioner. It is not possible to consider the charge of contempt on the basis of averments in the further affidavit filed before this court. No such case is made out in the original petition as filed. In the circumstances,

this petition is disposed of with liberty to the petitioner to take recourse to such other remedy as may be permissible by law. All aspects in that behalf will be considered on its own merits, in accordance with the law, as and when occasion arises.

5. Notice issued to respondents stands discharged.